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JAMES H. MCKENNEY
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No. 409.

Filed Harris, Start & Harris
for Appellant

Supreme Court of the United States.

OCTOBER TERM, 1902.

Filed Oct. 17, 1902.

No. 409.

ROBERT L. WINEBRENNER, Appellant,

vs.

EDWARD C. FORNEY, Appellee.

APPEAL

FROM

THE SUPREME COURT OF OKLAHOMA TERRITORY.

MOTION TO ADVANCE BY APPELLANT.

S. H. HARRIS,
Attorney for Appellant.

Judd & Detweiler,
City of Washington.

IN THE

Supreme Court of the United States.

October Term, 1902.

No. 409.

ROBERT L. WINEBRENNER, *Appellant*,

vs.

EDWARD C. FORNEY, *Appellee.*

MOTION TO ADVANCE CAUSE.

Now comes the appellant in the above-entitled cause and moves the Court to advance the said cause, and set the same for hearing on or about the 19th day of January, 1903, or any date subsequent thereto that will insure a disposition of the cause at the present term of the Court, and as ground for the said motion appellant states:

That this cause presents a single question for determination by the Court, and that is whether or not persons who made the race for land in the Cherokee Outlet, on the 16th day of September, 1893, from an Indian reservation within the outer boundaries of the country known as the Cherokee Outlet, were and are disqualified by reason thereof from holding and acquiring a valid patent to homestead land in said outlet under the homestead laws of the United States.

During the year 1898 a large number of cases were pending in the Supreme and inferior courts of the Territory of Oklahoma, instituted by persons who had made the race for land from the Indian reservation, and to whom the land had been awarded by the Land Department, to recover possession of the land awarded to them, and remove therefrom

contestants who had made the entry or run for land from the outer boundaries of the Cherokee Outlet. These actions were at that time termed proceedings by Mandatory Injunction. In order to settle the question as to whether or not patents issue to persons who had made the race from Indian reservations, the homestead claimants who were opposing that class of entrymen entered into a combination or arrangement by which they were to share equally the expenses of bringing a case to this Court for the final determination of the question in dispute, and, accordingly, the case of Black *vs.* Jackson was appealed to the Supreme Court of the Territory and from there to this Court. On account of the fact that the Supreme Court of Oklahoma Territory declined to pass upon the principal question involved, this Court also declined to determine the legality of the entry for lands from the Indian reservation, except in so far as the order of the Court commanding the overruling of the demurrer to Black's answer incidentally determined the question.

That persons in interest with Mr. Black delayed the trial of their cases in the District and Supreme Court as long as possible, but, prior to the decision by this Court of the Black-Jackson case, a number of the cases had been decided in the Supreme Court of Oklahoma Territory.

After the Black-Jackson decision was rendered the Oklahoma Supreme Court granted a rehearing in the mandatory injunction cases recently disposed of by them, but did not render a decision upon the rehearing until July of the present year. After this decision these cases were remanded to the district courts of Kay and Noble counties in said Territory, and stand for trial as suits in the nature of ejectment.

After the appeal of Black's associates and other persons opposing the entrymen from Indian reservations in the mandatory injunction cases these successful contestants commenced forcible entry and detainer suits, and in some instances ejectment suits, to recover the portion of the land held by the unsuccessful contestants, under order of super-

sedeas, and in that order two, three, and, in some instances, as high as four or five suits were pending between the same parties, all depending finally upon the question as to whether or not the run for lands was legally made from the Indian reservations.

It being impossible to secure a decision upon the question of the legality of the run from the Indian reservations until the issuance of patent, those who made the run from the boundary of the Cherokee Outlet were compelled to await the issuance of patent to one of the reservation runners before they could present a case requiring a determination of the main question involved, and such case was begun as soon as patent had issued to Edward C. Forney, the appellee herein.

That said cause was pushed as rapidly as possible through the district court of Kay County to the Supreme Court of Oklahoma Territory, and appealed to this Court immediately after the decision by the Supreme Court of Oklahoma Territory, and is docketed herein as case No. 409 for this term, but will probably not be reached for decision at this term unless advanced.

There has now accumulated in the district courts of Kay and Noble counties, and in the Supreme Court of Oklahoma Territory, one or more suits between all of Black's associates and the reservation runners, and many of such cases have already been decided in the Supreme Court of said Territory.

The question of the validity of the entry from the Indian reservation is in controversy between such reservation runners and about fifteen of the associates of Black, but the total number of cases pending between said parties in the nature of ejection suits, actions of trespass, forcible entry and detainer, and for the recovery of crops, amounts to about forty.

That the Supreme Court of said Territory has decided the case of Penny *vs.* McClung, and an action of forcible entry and detainer which is now pending in this Court on

writ of error, and said Supreme Court has recently decided the case of McClung *vs.* Penny, an action of ejectment involving the same land; and said Supreme Court has also decided the case of Cunningham *vs.* Morris, Anderson *vs.* Ferguson, and McDonald *vs.* Brady, all being actions of forcible entry and detainer, and said actions must be appealed to this Court before another term of this Court would be held, in order to prevent the return of mandates therein to the district courts, and entry and execution of judgment thereon.

That all of said cases, being about forty in number, pending in the said courts of Oklahoma, will be finally determined before another term of this Court, and before disposition could be made of this case unless advanced and disposed of at the present term.

That the pieces of land in controversy are worth, on an average, about seven thousand dollars, about one hundred and five thousand dollars in all. That patents have not issued to many of such tracts of land, and if the litigation in regard to possession should be terminated before final disposition of this case, and Black's associates ousted therefrom, the land would be immediately sold by a relinquishment to the Government of the United States, and the filing thereon by the purchaser, as has already been done in all cases where Black's associates have been ousted of possession, and these parties who made the race for lands from the outer boundary in good faith, and who are urging the consideration of the legal question involved through many years and at a great outlay of money, would be denied the benefits of any decision that might be rendered favorable to them by reason of the delay in procuring that decision.

That the expenses of carrying any of the pending cases through the Supreme Court of Oklahoma Territory and through this Court is about seven hundred dollars, and the only question that can possibly be determined in any of said cases relative to the merits of the controversy between

the parties, is the question presented in this case, and all of said expenses and the loss of said land, in case the contention of Black and his associates is correct, can be prevented by the advancement of this cause, and decision thereof at the present term of this Court.

That the Supreme Court of Oklahoma Territory has been appealed to to delay the decision of other cases involving the same question until decision of this Court can be had in this cause, but have refused to consent to such delay, and have not only decided such cases promptly as they were reached upon the docket of such court, but have taken up and decided said cases out of their order and as fast as they were filed and presented in said court, and it is impossible to secure the relief requested in this motion except in the manner as herein requested.

Respectfully submitted,

S. H. HARRIS,
JOHN W. SHARTEL,
J. J. DARLINGTON
Attorneys for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

ROBERT L. WINEBRENNER, *Appellant*, *vs.* EDWARD C. FORNEY, *Appellee.*	October Term, 1902. No. 409.

NOTICE.

To EDWARD C. FORNEY:

You are hereby notified that the appellant, Robert L. Winebrenner will, on Monday, the tenth day of November, 1902, present to the above-entitled court, in the above cause,

his motion to advance said cause, a true copy of which is attached to this notice.

Dated this 14th day of October, 1902.

S. H. HARRIS,
Attorney for Appellant.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, the undersigned Notary Public in and for the said District of Columbia, S. H. Harris, who, being first duly sworn, says that he is one of the attorneys for the appellant in the above cause; that he served the foregoing notice of motion to advance said cause, together with a true copy of said motion, upon the appellee, Edward C. Forney, on the 14th day of October, 1902, by enclosing said notice and copy of motion in an envelope addressed to the said Edward C. Forney, at Pierceton, Kay County, Oklahoma Territory, the place of residence and post-office address of said Forney, and by placing upon said envelope a sufficient amount of postage, and by depositing the same in the post office at the City of Washington; that in the usual course of mail, the said appellee will receive said notice on Friday, the 17th day of October, 1902; that the said appellee has no attorney of record in this court, and so far as affiant is informed, has not employed an attorney in this cause in this court.

S. H. HARRIS.

Subscribed and sworn to before me, this 14th day of October, 1902.

THOMAS HOW YEAGER,
Notary Public, D. C.

[NOTARIAL SEAL.]